

Representative for Petitioner:
Joshua C. Neal, Attorney, Barrett McNagny LLP

Representative for Respondent:
B. Michael Macer, Attorney, Biesecker Dutkanych & Macer LLC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Evansville Courier Co., Inc.,)	Petition Nos.: 82-029-11-1-7-02728
)	82-029-13-1-7-05166
Petitioner,)	82-029-14-1-7-10007-15
)	
v.)	Business Tangible Personal Property
)	
Vanderburgh County Assessor,)	Township: Pigeon
)	
Respondent.)	County: Vanderburgh
)	
)	Assessment Years: 2011, 2013, 2014 ¹

Appeal from the Final Determination of the
Vanderburgh County Property Tax Assessment Board of Appeals

SEPTEMBER 19, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ In an email dated January 7, 2016, the Board informed Mr. Neal that no record of a 2012 appeal existed. In response, on January 11, 2016, Mr. Neal alluded to a “correspondence” sent on May 15, 2015, regarding the 2012 appeal. Mr. Neal, however, failed to provide the Board with a file stamped Form 131 for 2012. To date, the Board does not have a record of a 2012 appeal. Even if the Board were to have a 2012 appeal properly before it, according to Ind. Code § 6-1.1-15-3(d), the appeal would be untimely. Accordingly, because the above mentioned appeal was only set for assessment years 2011, 2013, and 2014, this final determination will only address those years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioner sought a reduction in the assessed value of certain business personal property for the assessment years 2011, 2013, and 2014. Did the Petitioner prove it was entitled to a reduction? ²

PROCEDURAL HISTORY

2. The Petitioner initially filed its Business Tangible Personal Property Assessment Return (Form 103s) for 2011, 2013, and 2014 with the following requested assessed values: \$7,991,140 for 2011, \$5,045,490 for 2013, and \$2,500,000 for 2014.
3. Included on the Form 103s was a claim for “abnormal obsolescence” for each year. The Petitioner claimed the following “abnormal obsolescence” values: \$649,398 for 2011, \$3,526,348 for 2013, and \$5,105,598 for 2014. The Vanderburgh County Assessor notified the Petitioner its claims for “abnormal obsolescence” were denied for each year.
4. As such, the Petitioner initiated its appeal by filing Petition for Review of Assessment by Local Assessing Official (Form 130s) for 2011, 2013, and 2014 with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) on September 23, 2011, November 6, 2013, and December 31, 2014, respectively.
5. The PTABOA notified the Petitioner via Notifications of Final Assessment Determination (Form 115s) its claims for “abnormal obsolescence” had been denied for each year.
6. The Petitioner timely filed its Petition for Review of Assessment (Form 131s) with the Board. The Board has jurisdiction over the appeal under Ind. Code § 6-1.5-4-1.
7. On January 26, 2016, the Board’s administrative law judge (ALJ) Gary Ricks held a hearing on all three petitions. Neither the Board nor the ALJ inspected the property.

² At the hearing, the parties agreed that the Petitioner had the burden of proof.

HEARING FACTS AND OTHER MATTERS OF RECORD

8. The following people were sworn and testified at the hearing:

For the Petitioner – Jack Pate, Editor, Evansville Courier and Press,
Brad Venisnik, Porta Leone Consulting,
David Hurrell, Certified Public Accountant.³

For the Respondent - Bill Fluty, Vanderburgh County Assessor,
John Shelton, Regional Manager, Tax Manager Associates.

9. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1: Notice of hearing dated December 8, 2015,
Petitioner Exhibit 2: PTABOA findings for 2011, 2013, and 2014,
Petitioner Exhibit 3: Form 130 for 2011,
Petitioner Exhibit 4: Form 130 for 2012,
Petitioner Exhibit 5: Form 130 for 2013,
Petitioner Exhibit 6: Form 130 for 2014,
Petitioner Exhibit 7: Form 131 for 2011,
Petitioner Exhibit 8: Form 131 for 2012,
Petitioner Exhibit 9: Form 131 for 2013,
Petitioner Exhibit 10: Form 131 for 2014,
Petitioner Exhibit 11: Form 103 for 2011,
Petitioner Exhibit 12: Business Tangible Personal Property Return (Form 104)
for 2011,
Petitioner Exhibit 13: Schedule of Adjustments to Business Tangible Personal
Property Return (Form 106) for 2011,
Petitioner Exhibit 14: Cover letter to Vanderburgh County Assessor
accompanying the 2011 Form 103,
Petitioner Exhibit 15: Form 103 for 2012,
Petitioner Exhibit 16: Form 104 for 2012,
Petitioner Exhibit 17: Form 106 for 2012,
Petitioner Exhibit 18: Cover letter to the Vanderburgh County Assessor
accompanying the 2012 Form 103,
Petitioner Exhibit 19: Form 103 for 2013,
Petitioner Exhibit 20: Form 104 for 2013,
Petitioner Exhibit 21: Form 106 for 2013,
Petitioner Exhibit 22: Cover letter to the Vanderburgh County Assessor that
accompanying the 2013 Form 103,
Petitioner Exhibit 23: Form 103 for 2014,
Petitioner Exhibit 24: Form 104 for 2014,

³ Mr. Hurrell was sworn as a witness for the Petitioner, but did not testify.

- Petitioner Exhibit 25: Form 106 for 2014,
- Petitioner Exhibit 26: Cover letter to the Vanderburgh County Assessor accompanying the 2014 Form 103,
- Petitioner Exhibit 27: “Valuing Machinery and Equipment” from American Society of Appraisers,
- Petitioner Exhibit 28: “Market Value Report of Personal Property of the Evansville Courier Company,” prepared for the Journal Media Group, Inc., with an effective date of March 1, 2011,
- Petitioner Exhibit 29: “Market Value Report of Personal Property of the Evansville Courier Company,” prepared for the Journal Media Group, Inc. with an effective date of March 1, 2012,
- Petitioner Exhibit 30: “Market Value Report of Personal Property of the Evansville Courier Company,” prepared for the Journal Media Group, Inc., with an effective date of March 1, 2013,
- Petitioner Exhibit 31: “Market Value Report of Personal Property of the Evansville Courier Company,” prepared for the Journal Media Group, Inc., with an effective date of March 1, 2014,
- Petitioner Exhibit 32: Qualifications of Bradley Venisnik,
- Petitioner Exhibit 33: Various articles and treatises documenting the decline in circulation in the newspaper industry, from the Pew Research Center,
- Petitioner Exhibit 34: “Printing Press Values in an Era of Market Contraction and Technological Change,” from Bond and Pecaro, dated June 12, 2014.

10. The Respondent presented the following exhibits:⁴

- Respondent Exhibit 1: “Appraising Machinery and Equipment,” by John Alico, pages 104 and 105,
- Respondent Exhibit 3: 2011 Real Property Assessment Manual, pages 1-20,
- Respondent Exhibit 4: Letter from Kenneth Voss, MAI, to Bill Fluty, dated January 20, 2016,
- Respondent Exhibit 8: Graph of newspaper company stock prices, from Pew Research Center,
- Respondent Exhibit 17: Memorandum from Barry Wood, Department of Local Government Finance (DLGF), titled “Abnormal Obsolescence & Personal Property Assessments,” dated August 21, 2009,
- Respondent Exhibit 18: Memorandum from Barry Wood, DLGF, titled “Abnormal Obsolescence (Personal Property) Frequently Asked Questions,” dated April 19, 2011.

⁴ The Respondent did not offer the following exhibits: 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16.

11. The following additional items are recognized as part of the record:

- Board Exhibit 1: Form 131s with attachments,
- Board Exhibit 2: Notice of hearing,
- Board Exhibit 3: Hearing sign-in sheet,
- Board Exhibit 4: Petitioner's Post-Hearing Brief,
- Board Exhibit 5: Respondent's Post-Hearing Brief,
- Board Exhibit 6: Petitioner's Brief in Reply to Respondent's Post-Hearing Brief,
- Board Exhibit 7: Respondent's Reply Brief.

12. The business personal property in question is located at 300 East Walnut Street in Evansville.

13. The PTABOA determined the following values:

Year	Value
2011	\$8,640,540
2013	\$8,571,840
2014	\$7,605,600

14. The Petitioner requested the following values:

Year	Value
2011	\$7,410,630
2013	\$5,045,490
2014	\$2,500,000

OBJECTIONS

15. The Petitioner objected to Respondent's Exhibit 4 on two separate grounds. First, the Petitioner argued the Respondent failed to comply with pre-hearing disclosure requirements. Second, the Petitioner argued that the exhibit is hearsay because Mr. Voss was not present at the hearing. In response, the Respondent argued the exhibit is offered as rebuttal to Mr. Venisnik's appraisals of the property. The Respondent also stated the exhibit was not completed in time to comply with the disclosure requirements. The ALJ took the objection under advisement.

16. The Board will first address the pre-hearing disclosure portion of the objection. While the Board’s procedural rules do not specifically exempt rebuttal evidence from the exchange requirements, the Board does recognize a general exception for rebuttal evidence. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered as rebuttal that should have been presented in the party’s case-in-chief, but is not required to do so. *Id.* Here, the Board is willing to make an exception because the exhibit was specifically offered to challenge the validity of the Petitioner’s appraisals. Further, it does not appear that the exhibit should have been presented as part of the Respondent’s case-in-chief. Hence, the Petitioner’s objection is overruled as it pertains to the pre-hearing disclosure requirement.
17. The Petitioner also made an objection to this same exhibit on the grounds of hearsay. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

18. Respondent’s Exhibit 4 is hearsay, and the Respondent failed to point to any recognized hearsay exception. However, it does nothing to either prove or disprove the property’s market value-in-use. As such, the exhibit is admitted. Because the Petitioner objected to the exhibit, it cannot serve as the sole basis for the Board’s decision. The Board notes

however, the decision to allow Respondent's Exhibit 4 does not affect the final determination.

19. The Petitioner also objected to a question asked by Mr. Macer regarding Petitioner's Exhibit 34 on the grounds of relevance. The question posed was "whether Mr. Venisnik was aware of the exhibit prior to the hearing." In response, the Respondent stated that because Mr. Venisnik "apparently" saw this exhibit for the first time at the hearing, the document "obviously didn't play any part of his [Mr. Venisnik's] valuation." The ALJ took the objection under advisement. Here, the Petitioner's objection goes to the weight of the evidence, or as is the case here, the question, rather than to its admissibility. As such, the Petitioner's objection is overruled.
20. Finally, the Petitioner objected to another question posed by Mr. Macer to Mr. Shelton regarding "wording" in a relevant statute. The Petitioner argued the question called for a legal conclusion. In response, the Respondent stated he was not asking for a legal conclusion, he was "merely confirming the wording of the statute." The ALJ overruled the objection at the hearing. The Board adopts the ALJ's ruling as the question asks only about the inclusion of the word "nonrecurring" in the statute; as such, it did not call for a legal conclusion.⁵

ADMINISTRATIVE REVIEW AND THE PARTIES BURDENS

21. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
22. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d

⁵ Mr. Macer's question references the "nonrecurring nature" language found in 50 IAC 4.2-9-3(a).

1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis.”)

23. If the taxpayer makes a *prima facie* case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer’s evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER’S CONTENTIONS

24. The Petitioner publishes the Evansville Courier Journal, a daily newspaper with an average daily circulation of 39,999 in 2014.⁶ The Petitioner also prepares publications for other businesses such as the Henderson Gleaner, with a weekly circulation of roughly 9,000, and the Union Observer, with a weekly circulation of roughly 3,000. Additionally, the Petitioner engages in commercial printing for “other entities of an undefined amount.” *Pate testimony*.
25. The assessment at issue here involves certain items of business personal property. Specifically, a “flexographic” printing press, pamphlet inserters, and “other equipment” necessary to operate the press. The flexographic printing press was purchased in 1989 for \$15,350,601. A “single inserter,” used to insert such things as advertising brochures in the newspaper, was purchased in 1996 for \$815,817. A “double inserter” was purchased in 2005 for \$863,000. The flexographic printing press has an expected lifespan of 30 years and has “approximately 5 years of serviceable life remaining.” *Pate testimony; Venisnik testimony; Pet’r Ex. 28, 29, 30, 31*.
26. The decision to purchase this specific press was “somewhat unconventional” because most presses being utilized were of the “offset style.” At the time of the purchase, the Petitioner “assumed the flexographic type of press was the coming trend.” However, the “flexographic press never really caught on in the newspaper industry.” The reason, in

⁶ Mr. Pate testified that the Evansville Courier was owned by E.W. Scripps “until recently.” He went on to state that “earlier this year” the Courier was acquired by the Gannett Group and is now managed by the Journal Media Company. *Pate testimony*.

part, is the inability to print in color on both sides of the page. Additionally, the plates utilized for printing are more expensive than other presses. *Pate testimony.*

27. At one time, 30 newspaper companies utilized the flexographic style of press. Of those utilized, 14 have been scrapped, 4 are sitting idle, and 12 remain in use. *Pate testimony; Venisnik testimony; Pet'r Post-Hearing Brief, p. 11.*
28. Over the last few years, there has been a “dramatic shift” in how news is acquired. Consumers are moving away from traditional newspapers and instead obtain their news from cable television, electronic devices, news websites and various forms of social media outlets. Many of these sources are free of charge. In addition, free sources of advertising, such as Craigslist, have negatively affected advertising revenue. *Pate testimony.*
29. In 2011, the average daily circulation for the Evansville Courier was 49,126. Print circulation declined to 41,906 in 2013 and declined further in 2014 to 39,999. The circulation for the Sunday Edition of the Evansville Courier has also seen a decline. In 2011 the circulation was 70,684, in 2013 the circulation was 59,594, and in 2014 the circulation was 57,111. Circulation decline has a direct negative impact on the “financial health” of newspapers, such as declined advertising revenue. The changes in circulation are “entirely market-driven.” *Pate testimony.*
30. Despite the decline in print circulation, the Evansville Courier has replaced some of the lost revenue by increasing online circulation. Approximately 10% of the revenue is generated from digital media. This change has reduced “some printing expenses.” Further, cuts have been made in the size of the company, going from 500 employees in 2004 to the approximately 215 employees in 2016. *Pate testimony.*
31. In 2011, the Petitioner filed its annual tax return, which included a list of personal property items that are subject to normal depreciation. This list included items such as

computers, information technology, office furniture, and other equipment.⁷ Included in the return was a separate schedule that applied an “abnormal obsolescence” deduction to some of the equipment, including the printing press and the inserters that are the subject of this appeal.⁸ Similar returns were filed for the 2013 and 2014 tax years. *Pate testimony; Pet’r Post-Hearing Brief, p. 1.*

32. The 2011, 2013, and 2014 assessments do not take into account the “abnormal obsolescence” that existed as a result of the “ongoing economic downturn that has impacted the printing industry.” The current downward economic conditions, along with advances in media and technology and dramatic declines in spending for print advertising have caused consumers to shift away from traditional print news. Here, the proposed adjustment due to “inutility” is based upon accepted appraisal techniques identified by the American Society of Appraisers (ASA). *Pate argument; Pet’r Ex. 7, 9.*
33. The standard depreciation tables utilized for assessment purposes do not take into account the “extreme market and economic conditions” currently being experienced by the newspaper industry. *Pate argument; Pet’r Ex. 10.*
34. In an effort to prove what the correct assessment should be, the Petitioner presented several appraisals prepared by Brad Venisnik. Mr. Venisnik holds an Accredited Senior Appraiser designation from the ASA, and has been an appraiser for 21 years. He has appraised 137 newspaper printing presses, including 1 flexographic press. Mr. Venisnik prepared the appraisals in accordance with the Uniform Standard of Professional Appraisal Practices (USPAP). *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31, 32.*

⁷ “Normal obsolescence” means the anticipated or expected reduction in the value of the business personal property that can be foreseen by a reasonable, prudent businessman when property is acquired and placed into service. In general, it includes the expected, declining value through use, gradual decline in value because of expected technological improvements, the gradual deterioration or obsolescence through the mere passage of time, and the general assumption that such property will have a minimum value at the end of its useful life. *See* 50 IAC 4.2-9-2.

⁸ “Abnormal obsolescence” means that obsolescence which occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessman prior to the occurrence. It is of a nonrecurring nature and includes unforeseen changes in market values, exceptional technological obsolescence or destruction by catastrophe that has a direct effect upon the value of the personal property of the taxpayer at the tax situs in question on a going concern basis. *See* 50 IAC 4.2-9-3.

35. The appraisals value the business personal property by utilizing a market value-in-use analysis. Market value-in-use is a value that considers “not only the value of the machine itself, but the associated foundation, installation, and soft costs needed to take that machine and turn it into an operating asset.”⁹ *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31.*
36. According to Mr. Venisnik, of the three customary approaches to value, “the market approach is the most accurate and most commonly used approach in determining the value of these assets and in assessing obsolescence.” Here, the income approach cannot be utilized because it is too difficult to separate the “income stream among the press itself and the other equipment that are necessary for operation.” *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31.*
37. In order to determine the value of the printing press itself, Mr. Venisnik’s performed a comparison of “five similar printing presses.” One such comparison was an “estimate of value” from 2011 of a “similar press.” This estimate was provided by the original equipment manufacturer. The second and third “opinions of value” were provided via “telephone interviews with equipment dealers.”¹⁰ The fourth comparison was an “interview” with the “JMG operations director.” The director referenced a flexographic press in Georgia that was shut down and scrapped in 2012. The fifth comparison was a “quote” from the original manufacturer referencing a flexographic press in New Hampshire that was scrapped in 2013. These interviews provide “definitive evidence” that the Petitioner’s press is “worth nothing.” However, “there may be a market for the inserters.” *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31.*
38. Mr. Venisnik performed a similar market-based analysis on the “single out and double out inserters.” In order to do so, he identified four “indications of value.” The first “indicator of value” was a quote from the original equipment manufacturer as to the

⁹ Mr. Venisnik uses the terms “market value” and “market value-in-use” interchangeably throughout his presentation.

¹⁰ According to Mr. Venisnik’s report, the first telephone interview was with an equipment dealer from usedflexo.com, and the second interview was with a dealer from Flex Export Ltd. *Pet’r Ex. 28, 29, 30, 31.*

“probable” selling price. The remaining three “indicators of value” were from various dealers in the secondary equipment market. After deliberating, Mr. Venisnik came up with the following opinions of value for the inserters:

Year	Single out inserter	Double out inserter
2011	\$120,000	\$130,000
2013	\$100,000	\$110,000
2014	\$82,000	\$110,000

Venisnik testimony; Pet. Ex. 28, 29, 30, 31.

39. Generally, assets such as those under appeal here are subject to depreciation. But ordinary “straight line” or other typical methods of depreciation do not accurately reflect changes in their value. The market for printing presses is “now on a downward trend, not a fluctuation.” *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31.*
40. According to Mr. Venisnik, “the cost incurred to convert this [press] to any other function almost certainly would be better spent in buying a new asset that would do exactly what you want on day one.” The cost to replace this press would be approximately \$16,500,000. *Venisnik testimony; Pet’r Ex. 28, 29, 30, 31.*
41. In forming his argument, the Respondent erroneously relies on a prior Board decision. This decision does not support the Respondent’s argument. The petitioner in that case attempted to utilize a different definition for “abnormal obsolescence” than found in Indiana Code. The attempted definition did not include a requirement that the cause of the obsolescence be “unanticipated, unexpected, or unforeseen, and added causes including an increased price for raw materials and increased competition.” Appropriately, the Board rejected the petitioner’s attempt to unilaterally change the text of the Code. *Neal argument (referencing Applied Extrusion Technologies, Inc. v. Vigo Co., Petition No. 84-012-06-1-7-00001 (Ind. Bd. Tax Rev. Aug. 17, 2009)); Pet’r Reply to Resp’t Post-Hearing Brief, p 7.*

RESPONDENT'S CONTENTIONS

42. The personal property is correctly assessed. The Petitioner is seeking an adjustment based on the assertion that its personal property has decreased in value due to a decline in readership. In fact, the reduction of value is “likely” the result of the poor business decision to buy a flexographic printing press rather than a more commonly used offset press. Additionally, the reduction in value of the press is more likely attributable to “functional obsolescence” rather than “abnormal obsolescence.” *Macer argument; Resp’t Post-Hearing Brief, p. 6.*
43. Here, the Petitioner is attempting to circumvent the standard 30% floor for depreciation mandated by Indiana law. The only exception to the 30% floor for depreciation is for the tax-payer to show that “abnormal obsolescence” has occurred. Indiana narrowly defines “abnormal obsolescence” as something that is “unexpected, unforeseen and uncontrollable” and of a “nonrecurring nature” that renders property incapable of continued use for a prolonged period of time. Abnormal obsolescence does not include expected declining value through use, gradual decline in value because of expected technological improvements, gradual deterioration, or obsolescence through the mere passage of time. *Macer argument (referencing Applied Extrusion Tech., Pet. 84-012-06-1-7-00001 (Ind. Bd. Tax Rev. Aug. 17, 2009)); Resp’t Post-Hearing Brief, p. 1.*
44. Additionally, if the Petitioner seeks an adjustment for abnormal obsolescence, the Petitioner must be able to pass a “two-prong test.” First, the Petitioner must identify the causes of the alleged abnormal obsolescence. Then it must quantify the amount of the abnormal obsolescence to be applied. *Macer argument (referencing 50 IAC 4.2-9-4); Resp’t Post-Hearing Brief, p. 13.*
45. Here, the Petitioner has failed to point to any “unexpected, unforeseen, uncontrollable, nonrecurring event” that has rendered the property incapable of use. In fact, the press and its accompanying inserters, continue to provide daily newspapers for thousands of readers as it has since it was purchased 26 years ago. *Macer argument.*

46. The Board has previously held that common events in the nature of business do not amount to abnormal obsolescence. Financial difficulties based on anticipated market forces such as increased competition, decrease in market share, or increases in raw material costs do not meet that standard. There is a required showing that the equipment is, in fact, “obsolete.” *Macer argument (referencing Applied Extrusion Tech., Pet. 84-012-06-1-7-00001 (Ind. Bd. Tax Rev. August 17, 2009)); Resp’t Post-Hearing Brief, p. 16.*
47. The Petitioner’s decision to purchase a flexographic printing press rather than the more established offset printing press was a “poor business decision.” As such, the reduction in value of the press should be viewed as “functional obsolescence” rather than “abnormal obsolescence.” *Macer argument; Resp’t Post-Hearing Brief, p. 6.*
48. From 2010 to 2015 the newspaper industry maintained a relatively consistent economic trajectory. During these years advertising revenue in print form decreased by 5% and digital advertising increased by 3%. These changes equate to a net decline of 4%. Even with changes in the market, newspaper stock prices have grown significantly in value from 2008 to 2014. *Macer argument (referencing Pet’r Ex. 33); Resp. Ex. 8; Resp’t Post-Hearing Brief p. 3, 4.*
49. The Petitioner’s sole basis of valuation offered at the hearing was the opinion of Brad Venisnik. Mr. Venisnik prepared appraisals for 2011, 2013, and 2014; however, all of the appraisals were issued on November 11, 2015. *Macer argument (referencing Pet’r Ex. 28, 29, 30, 31).*
50. Mr. Venisnik is not familiar with Indiana’s method for valuing personal property. Instead, he relied on true tax valuation methods for *real property* as set forth in the Real Property Assessment Manual, stating:

The market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property. True tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the

buyer would purchase the real property for continuation of use of the property for its current use.

Macer argument (referencing Pet'r Ex. 28, 29, 30, 31); Resp't Post-Hearing Brief, p. 23 (referencing 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2).

51. As such, the Petitioner's appraisal is fatally flawed because "in Indiana, market value-in-use is used on real property only, for personal property you use cost unadjusted by depreciation and/or section 179 deductions."¹¹ Indiana has a straight forward way to determine personal property tax. The process begins with the "book cost" indicated on the taxpayer's books and records. Then the true tax value is computed by "multiplying the adjusted cost of each year's acquisitions in the respective pool by a percentage factor provided in the chart published in 50 IAC 4.2-4-2." *Macer argument; Shelton testimony; See 50 IAC 4.2-4-2.*

52. Instead of following Indiana's method of valuing personal property, Mr. Venisnik chose to utilize a "market approach" to value the assets. This approach is more commonly referred to as the "sales comparison approach."¹² The sales comparison approach derives a value by analyzing recent sales, or offering prices, of *properties* that are similar to the subject property. This process involves gathering data on sales and offerings of similar properties, determining their comparability, analyzing and adjusting the data, and applying the results to the subject property. It is vital to make adjustments to account for differences between the comparable properties and the subject property in size, effective age, date of sale, circumstances of sale, location, environmental compliance, safety compliance, and other factors that would have affected the sale price of the comparable property. "The selling price of the comparable must be adjusted to indicate what the selling price of the comparable would have been if the comparable had been identical to

¹¹ Mr. Shelton failed to provide any further explanation regarding "Section 179 deductions."

¹² In addition to the sales comparison approach, ASA and USPAP recognize two other approaches to value. Those approaches are the income approach and cost approach to value. "Economic obsolescence" can be measured by the cost or income approach, but it is "best measured through the income approach." *Macer argument; Resp't Ex. 1; Resp't Post-Hearing Brief, p. 10-11.*

the subject.” *Macer argument (referencing Pet’r Ex. 27); Resp’t Post-Hearing Brief, p. 25.*

53. Mr. Venisnik failed to utilize a single comparable *sale* for his “comparable sales approach.” Instead, he “contacted” the original equipment manufacturer and asked for his “opinion” of what someone “might be willing” to pay for the press. Mr. Venisnik conceded the original equipment manufacturer is not known for buying or selling used presses. *Macer argument; Resp’t Post-Hearing Brief, p. 8.*
54. Additionally, Mr. Venisnik failed to indicate how he adjusted the value “opinion” for the three years in question. His report simply says “he interpolated values for 2011 and 2014 to arrive at his 2013 valuation.” It is unclear if the value would have changed at all over this period of time because, according to Mr. Venisnik, the market for flexographic newspaper presses was a “small inactive market.” *Macer argument (referencing Pet’r Ex. 30); Resp’t Post-Hearing Brief, p. 8.*
55. Mr. Venisnik also contacted two “equipment dealers who are known for selling other types of flexographic presses but, are not known for selling flexographic presses for use by newspapers.” Mr. Venisnik acknowledged that he did not inquire as to whether the “equipment dealers” had any actual experience in buying or selling flexographic presses for the newspaper industry. *Macer argument; Resp’t Post-Hearing Brief, p. 9.*
56. Finally, Mr. Venisnik used two flexographic presses that had been “scrapped.” He “assumed” the two scrapped models were the “same kind of press.” He failed to ascertain the age or use of the presses, although he acknowledged that information would be important in comparing the value of the presses. *Macer argument (referencing Pet’r Ex. 28, 29, 30, 31); Resp’t Post-Hearing Brief, p. 9.*
57. As for the “inserters and other equipment,” Mr. Venisnik valued them based on the U.S. Bureau of Labor Statistics and Marshal Valuation Service tables. Mr. Venisnik failed to utilize the Indiana statutorily mandated depreciation tables. Further, no evidence was presented that Mr. Venisnik performed any individual valuation of the “other

equipment,” nor did he show that the “other equipment” was not being fully utilized or was not fully functional for the purpose for which it was intended. Mr. Venisnik did note however, no “abnormal obsolescence” was present with these items. *Macer argument; Resp’t Post-Hearing Brief, p. 10.*

58. According to USPAP, “the value of any such part must be tested by reference to appropriate data and supported by an appropriate analysis of such data.” But Mr. Venisnik failed to perform this type of analysis. Because of this shortcoming, it is impossible to evaluate the items within the individual pools required by Indiana law for calculating personal property taxes. *Macer argument (referencing USPAP Standard 7-4(f)); Resp’t Post-Hearing Brief, p. 10.*
59. The approach utilized by Mr. Venisnik failed to specifically measure the different forms of depreciation; it simply measured the total value of the property including all forms of depreciation. His appraisal does not specifically identify or quantify economic obsolescence, functional obsolescence, or abnormal obsolescence. *Macer argument; Resp’t Post-Hearing Brief, p. 12.*
60. As for the Petitioner’s “abnormal obsolescence” claim, Mr. Venisnik initially testified that he could not quantify what the adjustment should be. He later testified, however, that “abnormal obsolescence was simply the difference between the 30% statutory floor for depreciation and his market valuation.” Even given this testimony, Mr. Venisnik failed to provide any commonly approved method for his calculation. *Macer argument; Resp’t. Post-Hearing Brief, p. 11-12.*
61. Assuming “abnormal obsolescence” was present, it was the Petitioner’s burden to quantify the reduction in value that is attributable to the obsolescence. Here, the Petitioner failed to do that. Instead, the Petitioner presented a valuation that, on its face, is invalid. The Petitioner failed to make a prima facie case that its personal property was incorrectly assessed. *Macer argument; Resp’t Post-Hearing Brief, p. 29.*

ANALYSIS

62. Personal property includes all tangible personal property (other than real property) that is being: (A) held in ordinary course of a trade or business; (B) held, used or consumed in connection with the production of income; or (C) held as an investment. *See* Ind. Code § 6-1.1-1-11.
63. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of the year unless an extension of time to file is obtained. *See* Ind. Code § 6-1.1-3-7; Ind. Code § 6-1.1-3-1.5; 50 IAC 4.2-2-2.
64. The true tax value for Indiana property tax purposes is computed by multiplying the adjusted cost of each year's acquisitions obtained in the mandated state schedules, which automatically reflect all adjustments for Indiana property tax purposes, except abnormal obsolescence. *See* 50 IAC 4.2-4-7.
65. Here, the Petitioner timely filed its Form 103s for 2011, 2013, and 2014. The Form 103s were accompanied with a cover letter, prepared by the Petitioner's tax representative at that time, claiming an "abnormal obsolescence" deduction with respect to its flexographic printer and related assets.
66. "Obsolescence" is the reduction in value of business personal property that occurs through use, technological improvements, passage of time, changes in market values, and physical deterioration or destruction. *See* 50 IAC 4.2-9-1.
67. Taxpayers can challenge an assessor's findings regarding obsolescence depreciation on two bases: 1) they may argue that there were causes of obsolescence not accounted for in the assessment, or 2) they may argue that the quantification of obsolescence is not

supported by substantial evidence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1238 (Ind. Tax Ct. 1998).

68. “Normal obsolescence” is the anticipated or expected reduction in the value of business personal property that can be foreseen by a reasonable, prudent businessman when property is acquired and placed into service. In general, it includes the expected, declining value through use, gradual decline in value because of expected technological improvements, the gradual deterioration or obsolescence through the mere passage of time, and the general assumption that such property will have a minimum value at the end of its useful life. *See* 50 IAC 4.2-9-2.
69. “No adjustment will be allowed for normal obsolescence. The methods of valuation of business tangible personal property automatically reflect this type of obsolescence by using historic cost, short depreciable life, and accelerated depreciation on depreciable assets.” 50 IAC 4.2-9-6.
70. “Abnormal obsolescence” is a result of factors over which the taxpayer has no control. These factors are to be unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessman prior to the occurrence. Additionally, they must be of a nonrecurring nature. Abnormal obsolescence does include unforeseen changes in market values, exceptional technological obsolescence, or destruction by catastrophe that has a direct effect upon the value of the personal property of the taxpayer at the tax situs in question on a going concern basis.¹³ Abnormal obsolescence will be strictly construed. *See* 50 IAC 4.2-9-3; 50 IAC 4.2-4-8(c).
71. An adjustment for “abnormal obsolescence” requires a taxpayer to substantiate it. The provisions of this part of the regulation, and the specific portions of this regulation applicable to the class of property involved, must be followed, and the books and records

¹³ An example of an unforeseen change in market value is a government ban on the sale of a drug or chemical due to a new discovery or determination that may cause that item or the production equipment used to produce it to be abnormally obsolete. *See* 50 IAC 4.2-9-3(b).

of the taxpayer must not have reflected the abnormal obsolescence on the assessment date. *See* 50 IAC 4.2-9-6.

72. Here, the Petitioner is making a claim of “abnormal obsolescence.” The argument was made that “unforeseen changes in market value have caused the subject property to suffer from abnormal obsolescence.” These alleged unforeseen changes include increased competition from various news sources, widespread access to the internet, the delivery of news through various social media outlets, and online advertising that negatively affects advertising revenue.
73. The Petitioner’s press is 25 years old. It is reasonable to conclude that significant technological changes can, and will, occur over that time span. Examples of such changes include the virtual disappearance of items such as Beta videocassette recorders, cassette audiotapes, and typewriters. The invention of a newer, more productive piece of equipment capable of producing a better quality item does not necessarily mean an older, currently utilized item should be considered abnormally obsolete. *See* 50 IAC 4.2-9-3(c).
74. No argument was made that the subject property is not capable of, or is not currently, performing the very task for which it was purchased. In fact, the press is still utilized daily. Further, just because other forms of “media” have become more prevalent, that does not necessarily qualify the items for “abnormal obsolescence.” As the Board has previously held, common events in the nature of business, such as increased competition, do not amount to abnormal obsolescence. *See* 50 IAC 4.2-9-3(c); *see also Applied Extrusion Tech.*, Pet. No. 84-012-06-1-7-00001 (Ind. Bd. Tax Rev. Aug. 17, 2009); and *Koppers, Inc. v. Calumet Twp. Ass’r*, Pet. No. 45-001-05-1-7-00001 (Ind. Bd. Tax Rev. June 16, 2010).
75. Additionally, in order to qualify for “abnormal obsolescence,” the obsolescence must be of a “non-recurring nature.” The Board has heard previous appeals that offer guidance on the issue of “non-recurring nature.” *See Jofco, Inc. v. Bainbridge Township Ass’r, et al*, Pet. No. 19-018-04-1-7-00006 (Ind. Bd. Tax Rev. December 28, 2005); and *Kimball*

Int'l, Inc. v. Bainbridge Twp. Ass'r, Pet. Nos. 19-018-04-1-7-00007, 19-018-04-1-7-00008, and 19-018-04-1-7-00009 (Ind. Bd. Tax Rev. December 30, 2005); *see also* Ind. Code § 4.2-9-3(a).

76. The petitioners in *Jofco* and *Kimball* engaged in business dealings in New York and Washington. Both suffered a substantial decline in business, roughly 35% to 40%, following the “unexpected and unforeseen” terrorist attacks that occurred on September 11, 2001, in New York City and elsewhere. The Board agreed that, based upon a fact sensitive inquiry, the Petitioners qualified for an “abnormal obsolescence” deduction. Here, the Petitioner failed to point to a single, specific, non-recurring triggering event that would justify a determination of “abnormal obsolescence.” Further, the Petitioner failed to present any evidence its losses were remotely comparable to those suffered by the Petitioners in *Jofco* and *Kimball*. *See Jofco*, Pet. No. 19-018-04-1-7-00006 (Ind. Bd. Tax Rev. December 30, 2005); and *Kimball*, Pets. Nos. 19-018-04-1-7-00007, 19-018-04-1-7-00008, and 19-018-04-1-7-00009 (Ind. Bd. Tax Rev. December 30, 2005).
77. The Petitioner failed to show that the property under appeal suffered from “abnormal obsolescence.” The property has, according to Mr. Venisnik’s own testimony, “five years remaining of predicted useful service life, and continues to perform the purpose for which it was purchased twenty-five years ago.”
78. Even if the Board were to find the subject property has some degree of “abnormal obsolescence” the claim would still fail. The Petitioner’s appraiser failed to provide sufficient probative evidence that the cause for “abnormal obsolescence” resulted in a quantifiable loss in value. Instead of utilizing the appropriate method of calculating the assessment, the Petitioner’s appraiser chose to use the “market approach.” Methods of assessing personal property are substantially different from those used to assess real property, as previously explained. Further, even if Mr. Venisnik’s approach to value had been appropriate, his appraisal does not provide a reliable market value for the property under appeal. *See* 50 IAC 4.2-4-8; *see also* 50 IAC 4.2-9-4.

79. The sales comparison approach, or as Mr. Venisnik referred to it “the market approach,” requires gathering sufficient data on recently sold assets that are similar to the subject property, analyzing the value characteristics of those comparable assets, comparing the characteristics to those of the subject property and making appropriate adjustments for differences. It is difficult to see how Mr. Venisnik could have appropriately utilized this methodology when, according to his own testimony, there is “not an active market for the flexographic press.” Mr. Venisnik was unable to cite any “actual sale” of a flexographic press. Instead, he relied on “conversations” with the original equipment manufacturer, used equipment dealers, and other operators of flexographic presses. No probative evidence was presented that would persuade the Board that these individuals are able to establish a reliable value for a flexographic printing press. Further, Mr. Venisnik failed to show that “conversations” regarding “opinions” of value followed generally accepted appraisal practices.
80. With regard to the Petitioner’s argument stating it was “negatively impacted” by the decision to purchase a flexographic press rather than an offset press, this argument falls short. Presumably, a reasonably prudent purchaser of a multi-million dollar piece of equipment would be aware of the risks in purchasing equipment. The Petitioner acknowledges it was a “bad business decision.” But bad business decisions do not justify a finding of “abnormal obsolescence.”
81. The Petitioner failed to establish a prima facie case for reducing the assessed value of its personal property. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dept. of Local Gov’t. Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

82. The Petitioner failed to make a prima facie case. The Board finds for the Respondent. No change will be made to the assessed values of the business personal property for the 2011, 2013, and 2014 assessment years.

This Final Determination of the above captioned matter is issued on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.